THIRD DIVISION

[G.R. No. 136780. August 16, 2001]

JEANETTE D. MOLINO, *petitioner, vs.* SECURITY DINERS INTERNATIONAL CORPORATION, *respondent.*

D E C I S I O N

GONZAGA-REYES, *J.*:

Assailed by this petition for review on *certiorari* is the decision of the Court of Appeals dated September 28, 1998[1] which held petitioner liable as surety for the outstanding credit card debts of Danilo Alto with herein respondent corporation.

The decision of the Court of Appeals satisfactorily sums up the facts that led to the filing of this case:

The Security Diners International Corporation (SDIC) operates a credit card system under the name of Diners Club through which it extends credit accommodation to its cardholders for the purchase of goods and payment of services from its member establishments to be reimbursed later on by the cardholder upon proper billing. There are two types of credit cards issued: one, the Regular (Local) Card which entitles the cardholder to purchase goods and pay services from member establishments in an amount not exceeding P10,000.00; and two, the Diamond (Edition) Card which entitles the cardholder to purchase goods and pay services from member establishments in unlimited amounts. One of the requirements for the issuance of either of these cards is that an applicant should have a surety.

On July 24, 1987, Danilo A. Alto applied for a Regular (Local) Card with SDIC. He got as his surety his own sister-in-law Jeanette Molino Alto. Thus, Danilo signed the printed application form (Exhibit A) and Jeanette signed the Surety Undertaking (Exhibit A-5). Attached to the Application Form was an Agreement (Use of Diners Club Card), paragraph 16 of which reads:

16. SURETY. The cardholder shall furnish an adequate surety or sureties acceptable to Security Diners who shall be jointly and severally liable with the cardholder to pay Security Diners all the obligations and charges incurred and credit extended on the basis of the card. In the event the surety/sureties furnished the cardholder are discharged the cardholder must furnish a new surety or sureties acceptable to Security Diners within thirty (30) days. Otherwise the cardholders privileges shall be automatically terminated in accordance with Section 11 hereof.

The Surety Undertaking signed by Jeanette states:

I/WE, the undersigned, bind myself/ourselves jointly and severally with Mr. Danilo Alto to pay SECURITY DINERS INTERNATIONAL CORPORATION, hereinafter referred to as Security Diners all the obligations and charges including but not limited to fees, interest, attorneys fees and all other costs incurred by him/her in connection with the use of the DINERS CLUB CARD in accordance with the terms and conditions governing the issuance and use of the Diners Club Card. Any change or novation in the agreement or any extension of time granted by SECURITY DINERS to pay such obligations, charges and fees, shall not release me/us from this Surety Undertaking, it being understood that said undertaking is a continuing one and shall subsist and bind me/us until all such obligations, charges and fees have been fully paid and satisfied.

It is understood that the indication of a credit limit to the cardholder shall not relieve me/us of liability for charges and all other amounts voluntarily incurred by the cardholder in excess of the credit limit.

On the basis of the completed and signed Application Form and Surety Undertaking, the SDIC issued to Danilo Diners Card No. 36510293216-0006. The latter used this card and initially paid his obligations to SDIC. On February 8, 1988, Danilo wrote SDIC a letter (Exhibit B) requesting it to upgrade his Regular (Local) Diners Club Card to a Diamond (Edition) one. As a requirement of SDIC, Danilo secured from Jeanette her approval. The latter obliged and so on March 2, 1988, she signed a Note (Exhibit C) which states:

This certifies that I, Jeanette D. Molino, approve of the request of Danilo and Gloria Alto with Card No. 3651-203216-0006 and 3651-203412-5007 to upgrade their card from regular to diamond edition.

Danilos request was granted and he was issued a Diamond (Edition) Diners Club Card. He used this card and made purchases (Exhibits D, D-1 to D-7) from member establishments. On October 1, 1988 Danilo had incurred credit charged plus appropriate interest and service charges in the aggregate amount of P166,408.31. He defaulted in the payment of this obligation.

SDIC demanded of Danilo and Jeanette to pay said obligation but they did not pay. So, on November 9, 1988, SDIC filed an action to collect said indebtedness against Danilo and Jeanette. This was docketed in the Regional Trial Court of Makati, Branch 145 as Civil Case No. 88-2381. xxx [2]

Defendant Danilo Alto failed to file an Answer, and during the pre-trial conference respondent moved to have the complaint dismissed against him, without prejudice to a subsequent re-filing. Petitioner was left as the lone defendant, sued in her capacity as surety of Danilo.

In the Answer with Compulsory Counterclaim that she filed with the RTC, petitioner claimed that her liability under the Surety Undertaking was limited to P10,000.00 and that she did not expressly and categorically agree to act as surety for Danilo in an amount higher than P10,000.00.[3] By way of counterclaim, she asked for moral and exemplary damages.

On August 19, 1991, the trial court rendered a decision dismissing the complaint for failure of respondent to prove its case by a preponderance of the evidence. It found that while petitioner clearly bound herself as surety under the terms of Danilo Altos Regular Diners Club Card, there was no evidence that after the card had been upgraded to Diamond (Edition) petitioner consented or agreed to act as surety for Danilo. Exhibit C or Exhibit 1, *inter alia*, which was a note bearing petitioners signature certifying to her approval of Danilos request to have his card upgraded should be read simply as a statement of no objection to his request for upgrading, and not as an assumption of liability for the debts that Danilo may later owe through the said card.[4] The trial court also took note of the testimony of Alfredo Vicente, an officer of respondent, who opined that the consent to be bound as surety to an upgraded card should be categorical[5] and not in a simple no objection form.

The trial court went on further to state that petitioner was not liable for any amount, not even for P10,000.00 which is the maximum credit limit for Regular Diners Club Cards, since at the time of the upgrading Danilo had no outstanding credit card debts.[6] This is evident from the fact that Danilos request for upgrading was approved, since one of the requirements for the approval of a request for the upgrading of a credit card from Regular to Diamond is that the applicant must have paid all his billings for the last three months prior to his request.

Hence, the trial court disposed of the case with these pronouncements:

WHEREFORE, judgment is rendered dismissing the complaint against defendant Jeanette D. Molino-Alto for failure of the plaintiff to prove its case by a clear preponderance of evidence.

Said defendants counterclaim is also dismissed.

No pronouncement as to costs.

SO ORDERED.[7]

The Court of Appeals found contrary to the lower court, and declared that the Surety Undertaking signed by petitioner when Danilo Alto first applied for a Regular Diners Club Card clearly applied to the unpaid purchases of Danilo Alto under the Diamond card. In holding thus, the Court of Appeals referred to the terms of the said Surety Undertaking, which stated that any change or novation in the agreement on the use of the Diners Club card does not release the surety from his obligations, it being understood that the undertaking is a continuing one which subsists until all obligations and charges under the subject credit card are paid and satisfied. It also cited *Pacific Banking Corporation vs. Intermediate Appellate Court*,[8] a 1991 decision which held the surety liable to the extent of the credit cardholders indebtedness, under the clear terms of the Guarantors Undertaking that the surety signed with the credit card company.

The Court of Appeals further declared that it was erroneous of the trial court to conclude that petitioner was completely relieved of liability under Danilo Altos credit card since the Surety Undertaking she signed remained valid and enforceable even after the upgrading of the said card; besides, petitioner herself admitted that she was liable to the extent of P10,000.00.

Additionally, the Court of Appeals reduced the attorneys fees (stipulated in the Agreement for the Use of Diners Club Card) from 25% to 10% of the amount due, judging this to be a more reasonable rate under the circumstances.

The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, the appealed Decision is REVERSED and one is rendered ordering defendant-appellee Jeanette D. Molino-Alto to pay plaintiff-appellant Security Diners International, Inc. the following:

1. The sum of P166,408.31 plus interest of 3% per annum and 2% per month from November 9, 1988 until the obligation is fully paid;
2. The amount equivalent to 10% of the obligation mentioned in the preceding paragraph as attorneys fees; and
3. Costs.

SO ORDERED.[9]

Petitioners motion for reconsideration of the above decision was denied for lack of merit on December 1, 1998. Hence, the petition before us, which assigns the following errors:

I

The material findings of the Court of Appeals, which are contrary to those of the lower court, are erroneous.

II

The findings of the Court of Appeals are conflicting and/or without citation of specific evidence on which they are based.

III

The Court of Appeals erred in disregarding the applicable legal principle established by this Honorable Court that, unlike in ordinary solidary debtors, the surety does not incur liability unless the principal debtor is held liable.[10]

Petitioner posits that she did not expressly give her consent to be bound as surety under the upgraded card. She points out that the note she signed, marked as Exhibit C, registering her approval of the request of Danilo Alto to upgrade his card, renders the Surety Undertaking she signed under the terms of the previous card without probative value, immaterial and irrelevant as it covers only the liability of the surety in the use of the regular

credit card by the principal debtor xxx .[11] She argues further that because the principal debtor, Danilo Alto, was not held liable, having been dropped as a defendant, she could not be said to have incurred liability as surety.

The petition is devoid of merit.

The resolution of whether petitioner is liable as surety under the Diamond card revolves around the effect of the upgrading by Danilo Alto of his card. Was the upgrading a novation of the original agreement governing the use of Danilo Altos first credit card, as to extinguish that obligation and the Surety Undertaking which was simply accessory to it?

Novation, as a mode of extinguishing obligations, may be done in two ways: by explicit declaration, or by material incompatibility (implied novation). As we stated in *Fortune Motors vs. Court of Appeals, supra*:

> xxx The test of incompatibility is whether the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. Novation must be established either by the express terms of the new agreement or by the acts of the parties clearly demonstrating the intent to dissolve the old obligation as a consideration for the emergence of the new one. The will to novate, whether totally or partially, must appear by express agreement of the parties, or by their acts which are too clear or unequivocal to be mistaken.

There is no doubt that the upgrading was a novation of the original agreement covering the first credit card issued to Danilo Alto, basically since it was committed with the intent of cancelling and replacing the said card. However, the novation did not serve to release petitioner from her surety obligations because in the Surety Undertaking she expressly waived discharge in case of change or novation in the agreement governing the use of the first credit card.

The nature and extent of petitioners obligations are set out in clear and unmistakable terms in the Surety Undertaking. Thus:

1. She bound herself jointly and severally with Danilo Alto to pay SDIC all obligations and charges in the use of the Diners Club Card, including fees, interest, attorneys fees, and costs;

2. She declared that **any change or novation in the Agreement or any extension of time granted by SECURITY DINERS to pay such obligation, charges, and fees, shall not release (her) from this Surety Undertaking**;

3. (S)aid undertaking is a continuous one and shall subsist and bind (her) until all such obligations, charges and fees have been fully paid and satisfied; and

4. The indication of a credit limit to the cardholder shall not relieve (her) of liability for charges and all other amounts voluntarily incurred by the cardholder in excess of said credit limit.[12]

We cannot give any additional meaning to the plain language of the subject undertaking. The extent of a suretys liability is determined by the language of the suretyship contract or bond itself.[13] Article 1370 of the Civil Code provides: If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

This case is no different from *Pacific Banking Corporation vs. IAC, supra,* correctly applied by the Court of Appeals, which involved a Guarantors Undertaking (although thus denominated, it was in substance a contract of surety) signed by the husband for the credit card application of his wife. Like herein petitioner, the husband also argued that his liability should be limited to the credit limit allowed under his wifes card but the Court declared him liable to the full extent of his wifes indebtedness. Thus:

We need not look elsewhere to determine the nature and extent of private respondent Roberto Regala, Jr.s undertaking. As a surety he bound himself jointly and severally with the debtor Celia Regala to pay the Pacific

Banking Corporation upon demand, any and all indebtedness, obligations, charges or liabilities due and incurred by said Celia Syjuco Regala with the use of Pacificard or renewals thereof issued in (her) favor by Pacific Banking Corporation. xxx

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It is likewise not disputed by the parties that the credit limit granted to Celia Regala was P2,000.00 per month and that Celia Regala succeeded in using the card beyond the original period of its effectivity, October 29, 1979. We do not agree, however, that Roberto Jr.s liability should be limited to that extent. Private respondent Roberto Regala, Jr., as surety of his wife, *expressly bound himself up to the extent of the debtors (Celias) indebtedness likewise expressly waiving any discharge in case of any change or novation of the terms and conditions in connection with the issuance of the Pacificard credit card.* Roberto, in fact, made his commitment as a surety a continuing one, binding upon himself until all the liabilities of Celia Regala have been fully paid. All these were clear under the Guarantors Undertaking Roberto signed, thus:

x x x. Any changes of or novation in the terms and conditions in connection with the issuance or use of said Pacificard, or any extension of time to pay such obligations, charges or liabilities shall not in any manner release me/us from the responsibility hereunder, it being understood that the undertaking is a continuing one and shall subsist and bind me/us until all the liabilities of the said Celia Syjuco Regala have been fully satisified or paid. (italics supplied)

As a last-ditch measure, petitioner asseverates that, being merely a surety, a pronouncement should first be made declaring the principal debtor liable before she herself can be proceeded against. The argument, which is hinged upon the dropping of Danilo as defendant in the complaint, is bereft of merit.

The Surety Undertaking expressly provides that petitioners liability is solidary. A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.[14] Although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor is direct, primary and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.[15] There being no question that Danilo Alto incurred debts of P166,408.31 in credit card advances, an obligation shared solidarily by petitioner, respondent was certainly within its rights to proceed singly against petitioner, as surety and solidary debtor, without prejudice to any action it may later file against Danilo Alto, until the obligation is fully satisfied. This is so provided under Article 1216 of the Civil Code:

The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may be subsequently directed against the others, so long as the debt has not been fully collected.

Petitioner is a graduate of business administration, and possesses considerable work experience in several banks. She knew the full import and consequence of the Surety Undertaking that she executed. She had the option to withdraw her suretyship when Danilo upgraded his card to one that permitted unlimited purchases, but instead she approved the upgrading. While we commiserate in the financial predicament she now faces, it is also evident that the liability she incurred is only the legitimate consequence of an undertaking that she freely and intelligently obliged to. Prospective sureties to credit card applicants would be well-advised to study carefully the terms of the agreements prepared by the credit card companies before giving their consent, and pay heed to stipulations that could lead to onerous effects, like in the present case where the credit applied for was limitless. At the same time, it bears articulating that although courts in appropriate cases may equitably reduce the award for penalty as provided under such suretyship agreements if the same is iniquitous or unconscionable,[16] we are unable to give relief to petitioner by way of reducing the amount of the principal liability as surety under the circumstances of this case.

WHEREFORE, the petition is dismissed for lack of merit. The decision of the Court of Appeals is AFFIRMED in all respects.

SO ORDERED.

Melo, (Chairman), Panganiban, and *Sandoval-Gutierrez, JJ.,* concur.
Vitug, J., in the result, (pro hac vice).

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[1] Promulgated by the former Seventeenth Division; written by Associate Justice Hilarion L. Aquino, and concurred in by Associate Justice Ramon U. Mabutas, Jr. (Chairman) and Associate Justice Renato C. Dacudao.

[2] CA Decision; *Rollo*, 49-52.

[3] Answer with Compulsory Counterclaim, Annex B to Petition; *Rollo*, 29.

[4] RTC Decision; *Rollo*, 44-45.

[5] *Ibid.*, 45-46.

[6] *Ibid.*, 46.

[7] *Ibid.*, 47.

[8] 203 SCRA 496.

[9] CA Decision; *Rollo*, 58.

[10] Petition; *Rollo*, 10.

[11] *Ibid.*, 14.

[12] Exh. A-5; Records of the Case, 93.

[13] Rizal Commercial Banking Corporation *vs*. Court of Appeals, 178 SCRA 739 (1989); Luzon Surety Company, Inc. *vs*. Quebrar, 127 SCRA 295 (1984).

[14] Philippine National Bank *vs*. Pineda, 197 SCRA 1 (1991).

[15] Garcia *vs*. Court of Appeals, 191 SCRA 493 (1990).

[16] Article 1229 of the Civil Code provides: The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. Applied in Palmares *vs*. Court of Appeals, 288 SCRA 422 (1998); Barons Marketing Corporation *vs*. Court of Appeals, 286 SCRA 96 (1998); Insular Bank of Asia & America *vs*. Salazar, 159 SCRA 133 (1988).